

X ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
**FILED**

**APR 22 2005**

CLERK, U.S. DISTRICT COURT  
By \_\_\_\_\_ Deputy

DANIEL GAUDETTE

§

Plaintiff,

§

VS.

§

NO. 3-05-CV-0245-H

K.J. WENDT, ET AL.

§

Defendants.

§

**MEMORANDUM ORDER**

Plaintiff Daniel Gaudette, an inmate at FCI-Seagoville, has filed a motion for appointment of counsel to appeal the dismissal of this *Bivens* action.<sup>1</sup> For the reasons stated herein, the motion is denied.

A plaintiff in a civil rights action is not entitled to court-appointed counsel as a matter of law. *Akasike v. Fitzpatrick*, 26 F.3d 510, 512 (5th Cir. 1994); *Jackson v. Dallas Police Department*, 811 F.2d 260, 261 (5th Cir. 1986). The standard is exceptional circumstances. *Jackson*, 811 F.2d at 261; *Branch v. Cole*, 686 F.2d 264, 266 (5th Cir. 1982). The court must consider: (1) the type and complexity of the case; (2) whether the indigent plaintiff can adequately present the case; (3) whether the plaintiff can adequately investigate the case; and (4) whether the evidence will consist in large part of conflicting testimony so as to require skill in the presentation of evidence and cross-examination. *Ulmer v. Chancellor*, 691 F.2d 209, 213 (5th Cir. 1982). Only the first factor is relevant to a motion for appointment of counsel on appeal. See *Pourgholam v. Advanced Telemarketing Corp.*, 2005 WL 783067 at \*1 (N.D. Tex. Apr. 4, 2005).

<sup>1</sup> *Bivens v. Six Unknown Named Agents*, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 691 (1971).

Although the Fifth Circuit has recognized that civil rights actions are “more complex than many other cases,” that fact alone does not warrant the appointment of counsel. *Jackson*, 811 F.2d at 262. The court still must determine whether exceptional circumstances exist. *Id.*, citing *Branch*, 686 F.2d at 266. Plaintiff has failed to meet this burden. In fact, the court previously determined that plaintiff failed to state a claim upon which relief can be granted and summarily dismissed his complaint pursuant to 28 U.S.C. § 1915(e)(2). See *Gaudette v. Wendt*, 2005 WL 544187 (N.D. Tex. Mar. 7, 2005), *rec. adopted*, (N.D. Tex. Mar. 23, 2005). No new facts are alleged to change this determination or to warrant the appointment of counsel on appeal.

Accordingly, plaintiff's motion for appointment of counsel is denied.

SO ORDERED.

DATED: April 22, 2005.



JEFF KAPLAN  
UNITED STATES MAGISTRATE JUDGE

A handwritten signature of "Jeff Kaplan" is written over a solid black oval. Below the signature, the name "JEFF KAPLAN" is printed in capital letters, followed by "UNITED STATES MAGISTRATE JUDGE" on the next line.